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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12 Cr. 802 (KBF)

5 TREVOR COLE and DOMINIQUE JEAN  
6 PHILLIPE,

7 Defendants.

-----x

9 September 9, 2013  
10 9:39 a.m.

11 Before:

12 HON. KATHERINE B. FORREST,

13 District Judge

14 APPEARANCES,

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 BY: PARVIN MOYNE  
TIMOTHY SINI

18 Assistant United States Attorneys

19 DAVID TOUGER

20 Attorney for Defendant Cole

21 BENJAMIN HEINRICH

22 Attorney for Defendant Jean-Phillipe

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your names  
3 for the record.

4 MS. MOYNE: Parvin Moyne and Timothy Sini for the  
5 government. Good morning, your Honor.

6 THE COURT: Good morning.

7 MR. SINI: Good morning, your Honor.

8 MR. TOUGER: Good morning, your Honor. David Touger  
9 for Mr. Cole.

10 THE COURT: Good morning, Mr. Touger. And the Court  
11 notes that Mr. Cole is present here in court, this morning.

12 MR. HEINRICH: Good morning, your Honor. Benjamin  
13 Heinrich for Dominique Jean-Phillipe.

14 THE COURT: Good morning, Mr. Heinrich. And the Court  
15 notes that Mr. Phillipe is here present in Court this morning.

16 I have been handed two Pimentel Letters, one with  
17 respect to Mr. Dominique Jean Phillipe and one with respect to  
18 Mr. Trevor Cole. These letters appear to indicate that rather  
19 than calling this matter for trial this morning each of the  
20 defendants has made his own decision to plead guilty.

21 Do I have the state of play correct?

22 MR. TOUGER: Your Honor, except for the fact that  
23 there is no agreement with the Pimentel letter.

24 THE COURT: I'm sorry. Not an agreement. I have been  
25 handed a Pimentel letter and I have been told that it reflects

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1 that there is an intent --

2 MR. TOUGER: There is a plea. We will plead guilty to  
3 the indictment.

4 THE COURT: -- intent to plead guilty.

5 MR. HEINRICH: Yes, your Honor; it is a signal to the  
6 Court that there is a plea. It just represents the  
7 government's view and basically that we don't necessarily agree  
8 with everything in it, but.

9 THE COURT: Here is the way I would like to proceed.  
10 What I would like to do is take the plea as to Mr. Cole first  
11 and then take the plea as to Mr. Dominique Jean Phillipe  
12 second. There is no particular reason for that order, just  
13 happens to cross the table like that.

14 What I do need, though, is for the individual who is  
15 not pleading yet who will plead after Mr. Cole, to be out of  
16 the room. The reason for that is because part of the plea  
17 allocution, as you all know, has to do with whether or not this  
18 is being done voluntarily and independently and is the product  
19 of his own decision and that he is comfortable with. I don't  
20 want there to ever be a question as to whether or not the  
21 presence of the two individuals here together has coerced one  
22 or the other into pleading.

23 So, the allocutions and the plea will need to be done  
24 separately. All right?

25 MR. HEINRICH: I understand the Court's position. The

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1 record should reflect that is clearly not the case, that  
2 Mr. Cole's decision was a decision I believe which was made  
3 first. Dominique's position and his decision to enter this  
4 plea came about following a courtroom visit allowed by the  
5 marshals with his sister who flew in from Orlando, and that  
6 eventually sealed his mind. It has nothing to do with what  
7 Mr. Cole is doing. They are making independent decisions.

8 THE COURT: We can do it -- the order of it doesn't  
9 matter. Since you're standing, Mr. Heinrich, we can take  
10 Mr. Dominique Jean Phillipe and do his plea allocution first,  
11 Mr. Cole can go back into the room for --

12 MR. HEINRICH: If you insist on going back in the room  
13 I will go back with Mr. Phillipe.

14 THE COURT: If you and Mr. Touger have some view as to  
15 who would like to go first that is fine, but I would like to  
16 have whoever is not going first go back into the room.

17 MR. TOUGER: I guess I'm first.

18 THE COURT: Thank you.

19 Could the marshals please take Mr. Phillipe into the  
20 side room?

21 (Defendant Dominique Jean Phillipe and his counsel not  
22 present)

23 THE COURT: We are now going to go through the various  
24 matters, Mr. Cole, that relate directly to whether or not you  
25 decide ultimately to enter a plea of guilty. While your

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1 counsel has indicated that you have expressed an intent to  
2 plea, until I ask you during this morning's proceeding how you  
3 plead as to each count, which I will do very specifically, you  
4 haven't entered a guilty plea and we could still call this  
5 matter for trial.

6 Do you understand that?

7 DEFENDANT COLE: Yes.

8 THE COURT: What I am going to do is I'm going to ask  
9 you some questions and make sure that your mind is clear as you  
10 are here in court today, that you are able to consider the  
11 decision that you are making and that there is nothing that is  
12 causing you to have an unclear mind. So, to do that I want to  
13 be able to have some back and forth with you, I'm going to have  
14 my deputy put you under oath, and I'm going to ask you some  
15 background questions.

16 DEFENDANT COLE: All right.

17 THE COURT: Could you stand, sir?

18 (Defendant sworn)

19 THE DEPUTY CLERK: Please state your full name and  
20 spell it.

21 DEFENDANT COLE: Trevor Cole, last name C-O-L-E.

22 THE COURT: Mr. Cole, how old are you, sir?

23 DEFENDANT COLE: 27 years old.

24 THE COURT: Do you know that you are now under oath  
25 and that you have to answer my questions truthfully and if you

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1 don't you could be separately prosecuted for perjury?

2 DEFENDANT COLE: Yes.

3 THE COURT: Where were you born, sir.

4 DEFENDANT COLE: In Jamaica.

5 THE COURT: Are you a U.S. citizen?

6 DEFENDANT COLE: Naturalized.

7 THE COURT: So you have gone through the  
8 naturalization and become a U.S. citizen?

9 DEFENDANT COLE: Under my mother.

10 THE COURT: But you yourself have gone through the  
11 proceeding?

12 DEFENDANT COLE: No.

13 THE COURT: Is Mr. Cole a U.S. citizen?

14 MS. MOYNE: Your Honor, we're not sure.

15 THE COURT: Mr. Cole, I want to make sure that you  
16 understand that if you are not a U.S. citizen and you do plead  
17 guilty, there could be very serious adverse effects,  
18 immigration impact that could flow from a guilty plea and that  
19 deportation would be presumptive.

20 Do you understand that?

21 DEFENDANT COLE: Yes.

22 THE COURT: What is the highest level of education  
23 that you achieved?

24 DEFENDANT COLE: GED.

25 THE COURT: And what was the highest level of

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1 education you achieved while you were in school?

2 DEFENDANT COLE: Oh, ten.

3 THE COURT: Tenth grade?

4 DEFENDANT COLE: Yes.

5 THE COURT: Did you get the GED over here?

6 DEFENDANT COLE: Yes.

7 THE COURT: Have you taken any college-level courses?

8 DEFENDANT COLE: No.

9 THE COURT: Have you -- do you have a wife or  
10 significant other of any kind?

11 DEFENDANT COLE: No.

12 THE COURT: Do you have any children?

13 DEFENDANT COLE: Yes.

14 THE COURT: How many?

15 DEFENDANT COLE: Three.

16 THE COURT: How old are your kids?

17 DEFENDANT COLE: 7, 2, and four months.

18 THE COURT: Have you ever been hospitalized for any  
19 kind of alcohol problem?

20 DEFENDANT COLE: No.

21 THE COURT: Have you ever been treated for an alcohol  
22 problem?

23 DEFENDANT COLE: No.

24 THE COURT: Have you ever been treated for a drug  
25 addiction?

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1 DEFENDANT COLE: No.

2 THE COURT: Have you ever been hospitalized for a drug  
3 addiction?

4 DEFENDANT COLE: No.

5 THE COURT: Have you ever been treated for any kind of  
6 mental illness or psychological problem?

7 DEFENDANT COLE: No.

8 THE COURT: Have you ever been hospitalized for any  
9 kind of mental illness or psychological problem?

10 DEFENDANT COLE: No.

11 THE COURT: Have you ever had a head injury?

12 DEFENDANT COLE: No.

13 THE COURT: Is there anything at all about your  
14 background that you think I should know that makes you feel  
15 like you're unclear in your mind?

16 DEFENDANT COLE: No.

17 THE COURT: Any kind of injury that you ever sustained  
18 in the past?

19 DEFENDANT COLE: No.

20 THE COURT: How do you feel today in your head? Are  
21 you clear?

22 DEFENDANT COLE: Oh yeah. Yeah, yeah.

23 THE COURT: All right.

24 Do you understand why you are here today?

25 DEFENDANT COLE: Yes, ma'am.



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1 THE COURT: And you are clear about these proceedings  
2 right now?

3 DEFENDANT COLE: Yes.

4 THE COURT: Does either counsel have any doubt as to  
5 Mr. Cole's competency to consider the matters we are going to  
6 go through today and to enter a guilty plea should he choose to  
7 do so later in these proceedings?

8 MS. MOYNE: The government does not.

9 MR. TOUGER: No, your Honor.

10 THE COURT: The Court does find that Mr. Cole is very  
11 clear in his answers to the Court, that he is -- he certainly  
12 understands what is going on, his answers are responsive to the  
13 Court's questions and the Court does find that he is competent  
14 to consider the matters that we are going through today and if  
15 he chooses to do so, to enter a plea when the appropriate time  
16 comes.

17 You may be seated, Mr. Cole.

18 DEFENDANT COLE: No problem.

19 THE COURT: Mr. Cole, what we are going to do now is  
20 to go over certain rights that you have to be sure that you  
21 understand them. If at any point in time you don't understand  
22 something I'm going through, make sure I know and I will just  
23 explain it again. All right?

24 Do you understand you have got a right to counsel now  
25 and at every stage of these proceedings?

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1 DEFENDANT COLE: Yes.

2 THE COURT: And Mr. Touger is your lawyer?

3 DEFENDANT COLE: Yes.

4 THE COURT: Are you satisfied with his representation  
5 of you?

6 DEFENDANT COLE: Yes.

7 THE COURT: Have you had an adequate opportunity to  
8 discuss the charges against you with Mr. Touger?

9 DEFENDANT COLE: Yes.

10 THE COURT: Have you had an adequate opportunity to  
11 discuss the possible consequences that could flow from entering  
12 a guilty plea to the charges?

13 DEFENDANT COLE: Yes.

14 THE COURT: Do you understand that if you went to  
15 trial later today that in fact Mr. Touger would represent you  
16 at that trial, you would have a lawyer at that trial?

17 DEFENDANT COLE: Yes.

18 THE COURT: And do you understand if at any point in  
19 these proceedings you could not afford a lawyer, a lawyer would  
20 be appointed for you?

21 DEFENDANT COLE: Yes.

22 THE COURT: What I want to do now is talk about your  
23 right to a trial. If you plead guilty do you understand you  
24 are going to give up your right to go to trial?

25 DEFENDANT COLE: Yes.

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1 THE COURT: Under the laws of the United States and  
2 the U.S. Constitution, you have a right to a jury trial, a  
3 public trial on the charges contained in the indictment against  
4 you.

5 Did you understand that?

6 DEFENDANT COLE: Yes.

7 THE COURT: And do you understand that at that trial  
8 you would be presumed to be innocent and the government would  
9 have to prove that you were guilty beyond a reasonable doubt  
10 before you could be found guilty?

11 DEFENDANT COLE: Yes.

12 THE COURT: Do you understand that you would not have  
13 to prove that you were innocent?

14 DEFENDANT COLE: Yes.

15 THE COURT: Do you understand that a jury of 12 people  
16 would have to agree unanimously that you were guilty before a  
17 verdict of guilty could be returned against you?

18 DEFENDANT COLE: Yes.

19 THE COURT: Do you understand that during the trial  
20 the witnesses for the government would have to come to Court  
21 and testify in your presence and Mr. Touger could cross-examine  
22 those witnesses, he could object to evidence offered by the  
23 government, he could subpoena witnesses to come to Court and  
24 testify on your behalf and offer evidence on your behalf?

25 DEFENDANT COLE: Yes.

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1 THE COURT: Do you understand that at a trial,  
2 although you would have a right to testify, you would also have  
3 the right not to testify if you chose not to testify, and that  
4 if you did not choose to testify, the jury would be instructed  
5 that they could not draw any inference or suggestion of guilt  
6 from the fact that you did not testify?

7 DEFENDANT COLE: Yes.

8 THE COURT: Do you understand that even at this time  
9 as we are discussing the possibility of your entering a guilty  
10 plea, you still have the right to go to trial until the point  
11 in the proceedings where I ask you for a plea?

12 DEFENDANT COLE: Yes.

13 THE COURT: And then at that time you only give up  
14 your right to a trial if you plead guilty.

15 Do you understand that?

16 DEFENDANT COLE: Yes.

17 THE COURT: Now, if you want to plead guilty in a few  
18 minutes -- and I will tell you, you are also going to have to  
19 give up your right not to incriminate yourself because if you  
20 plead guilty it is very important that you plead guilty because  
21 you are guilty of the crimes charged and that you are not  
22 pleading guilty for any other reason.

23 Do you understand that?

24 DEFENDANT COLE: Yes.

25 THE COURT: Let's talk about the nature of the charges

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1 against you and the possible consequences, the penalties that  
2 could flow from pleading guilty to those charges.

3 Do you understand that in Count One you're charged  
4 with conspiring to commit a robbery in or about September of  
5 2012?

6 DEFENDANT COLE: Yes.

7 THE COURT: And do you understand that Count One  
8 carries a maximum term of imprisonment of 20 years?

9 DEFENDANT COLE: Yes.

10 THE COURT: And do you understand that Count One  
11 carries a maximum term of supervised release of three years?

12 DEFENDANT COLE: Yes.

13 THE COURT: And do you understand that Count One also  
14 carries a maximum fine that is the greatest of \$250,000, twice  
15 the gross pecuniary gain derived from the offense or twice the  
16 gross pecuniary loss to persons other than yourself resulting  
17 from the offense and a \$100 special assessment?

18 DEFENDANT COLE: Yes.

19 THE COURT: Do you understand that Count Two charges  
20 you with committing and aiding and abetting the commission of  
21 the robbery in September of 2012?

22 DEFENDANT COLE: Yes.

23 THE COURT: Do you understand that Count Two carries  
24 separate possible penalties including a maximum term of  
25 imprisonment of 20 years?

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1 DEFENDANT COLE: Yes.

2 THE COURT: And a maximum term of supervised release  
3 of three years?

4 DEFENDANT COLE: Yes.

5 THE COURT: And it carries the same fine as I  
6 described with respect to Count One?

7 DEFENDANT COLE: Yes.

8 THE COURT: And it also carries a \$100 mandatory  
9 special assessment?

10 Do you understand that?

11 DEFENDANT COLE: Yes.

12 THE COURT: Do you understand in Count Three you are  
13 charged with conspiring to commit kidnapping in September of  
14 2012?

15 DEFENDANT COLE: Yes.

16 THE COURT: Do you understand that Count Three carries  
17 its own separate possible penalties?

18 DEFENDANT COLE: Yes.

19 THE COURT: Do you understand that Count Three carries  
20 a maximum term of life imprisonment?

21 DEFENDANT COLE: Yes.

22 THE COURT: Do you understand that Count Three carries  
23 a maximum term of supervised release of five years?

24 DEFENDANT COLE: Yes.

25 THE COURT: And that Count Three also carries the same

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1 kind of fine that I described in relation to Count One and Two  
2 but it could be separately imposed?

3 DEFENDANT COLE: Yes.

4 THE COURT: And do you understand that Count Three  
5 also carries a separate \$100 mandatory special assessment?

6 DEFENDANT COLE: Yes.

7 THE COURT: Do you understand in Count Four you are  
8 charged with committing and aiding and abetting the commission  
9 of kidnapping in September of 2012?

10 DEFENDANT COLE: Yes.

11 THE COURT: Do you understand that Count Four carries  
12 separate penalties from the other counts, it has got its own  
13 independent penalties --

14 DEFENDANT COLE: Yes.

15 THE COURT: -- as to each of the counts?  
16 Count Four carries a maximum term of life  
17 imprisonment. Do you understand that?

18 DEFENDANT COLE: Yes.

19 THE COURT: Count Four also carries a maximum term of  
20 supervised release of five years.

21 DEFENDANT COLE: Yes.

22 THE COURT: Count Four also carries a maximum fine  
23 that is similar to the fine or that is the same as the fine I  
24 described in the other counts.

25 Do you understand that?

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1 DEFENDANT COLE: Yes.

2 THE COURT: Do you understand that Count Four also  
3 carries a separate mandatory \$100 special assessment?

4 DEFENDANT COLE: Yes.

5 THE COURT: Do you understand that in Count Five you  
6 are charged with carrying, using and brandishing a firearm  
7 during and in relation to and possessing a firearm in  
8 furtherance of the violent crimes charged in Counts One through  
9 four?

10 DEFENDANT COLE: Yes.

11 THE COURT: Do you understand that Count Five carries  
12 a maximum term of life imprisonment?

13 DEFENDANT COLE: Yes.

14 THE COURT: Do you understand that Count Five carries  
15 a mandatory minimum of seven years' imprisonment which must be  
16 served consecutively which means after any other term of  
17 imprisonment is imposed?

18 DEFENDANT COLE: Yes.

19 THE COURT: Do you understand that Count Five carries  
20 a maximum term of supervised release of five years?

21 DEFENDANT COLE: Yes.

22 THE COURT: And do you understand that Count Five also  
23 carries a maximum fine that is the greatest of \$250,000, twice  
24 the gross pecuniary gain to persons derived from the offense or  
25 twice the gross pecuniary loss to persons other than yourself



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1 resulting from the offense and a \$100 special assessment?

2 DEFENDANT COLE: Yes.

3 THE COURT: Do you understand that the maximum  
4 penalties that could be imposed for Counts One through Five is  
5 life imprisonment plus seven years?

6 DEFENDANT COLE: Yes.

7 THE COURT: Do you understand that you could also be  
8 required to make forfeiture --

9 (Defendant and counsel conferring)

10 THE COURT: -- if there is any property that is  
11 traceable to the offense.

12 DEFENDANT COLE: Yes.

13 THE COURT: Do you understand that restitution could  
14 be imposed?

15 DEFENDANT COLE: Yes.

16 THE COURT: Do you understand that forfeiture and  
17 restitution are not in place of any fine that the Court might  
18 otherwise impose?

19 DEFENDANT COLE: Yes.

20 THE COURT: Let me turn, for a moment, to a phrase I  
21 used: Supervised release.

22 After you get out of prison do you understand that  
23 there would be a term of supervised release imposed?

24 DEFENDANT COLE: Yes.

25 THE COURT: And that if you violated the terms and

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1 conditions of supervised release that you could be returned to  
2 prison without trial?

3 DEFENDANT COLE: Yes.

4 THE COURT: Do you also understand that it is possible  
5 that you could spend your life in prison and that no supervised  
6 release would be imposed?

7 DEFENDANT COLE: Yes.

8 THE COURT: Do you understand that no one -- not your  
9 lawyer, not the government's lawyer -- that no one can give you  
10 any assurance of what your sentence would be if you plead  
11 guilty because I'm going to decide your sentence and I'm not  
12 going to do that right now?

13 DEFENDANT COLE: Yes.

14 THE COURT: Have you discussed these issues with  
15 Mr. Touger?

16 DEFENDANT COLE: Yes.

17 THE COURT: Do you understand that even if your  
18 sentence ends up being different from what you hope it will be  
19 or expect that it will be, if you enter a guilty plea you are  
20 going to be bound by that guilty plea and you are not going to  
21 be able to withdraw that plea?

22 DEFENDANT COLE: Yes.

23 THE COURT: I want to make sure that you are pleading  
24 guilty, if you plead guilty voluntarily.

25 Has anybody threatened you to plead guilty?

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1 DEFENDANT COLE: No.

2 THE COURT: Have you seen -- well, do you understand  
3 that in the Pimentel letter with the government there is no  
4 agreement between you and the government?

5 DEFENDANT COLE: Yes.

6 THE COURT: Do you understand that the Pimentel letter  
7 simply sets forth the government's estimation as to what  
8 possible penalties could be imposed?

9 DEFENDANT COLE: Yes.

10 THE COURT: And do you understand that the government  
11 has indicated that they calculate your offense level at 43 and  
12 your Criminal History Category as VI?

13 DEFENDANT COLE: Yes.

14 THE COURT: And do you understand that those  
15 calculations are not binding on the Court, the Court has to  
16 separately determine what it believes your offense level and  
17 Criminal History Category are?

18 DEFENDANT COLE: Yes.

19 THE COURT: The Criminal History Category is actually  
20 46 but it is brought down to 43?

21 MS. MOYNE: I believe it is brought down to 44 under  
22 the government's estimation, your Honor.

23 THE COURT: Let me just take a look.

24 MS. MOYNE: On page 5.

25 THE COURT: Do you understand, Mr. Cole, that the

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1 government has estimated that your offense level would be 44?

2 DEFENDANT COLE: Yes, your Honor.

3 THE COURT: Do you understand that that estimation is  
4 not binding on the Court, the Court does its own calculation of  
5 your offense level?

6 DEFENDANT COLE: Yes, ma'am.

7 THE COURT: Has anybody coerced you in any way to  
8 plead guilty?

9 DEFENDANT COLE: No.

10 THE COURT: Has anybody threatened you to plead  
11 guilty?

12 DEFENDANT COLE: No.

13 THE COURT: Do have you any agreement with anybody  
14 about what your sentence is going to be?

15 DEFENDANT COLE: No.

16 THE COURT: Do you have any agreement with the  
17 government about your sentence or anything else?

18 DEFENDANT COLE: No.

19 THE COURT: Now I want to discuss the factual basis  
20 for your plea and why you think you're guilty of the crimes  
21 that are charged in Counts One through Five. So, Ms. Moyne,  
22 why don't you go through the elements of Counts One through  
23 Five and then, Mr. Cole, you can tell me why you think you're  
24 guilty of those charges.

25 MS. MOYNE: Yes, your Honor.

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1 First, with respect to all of the counts, the  
2 government would have to establish venue in the Southern  
3 District of New York by a preponderance of the evidence meaning  
4 that some act in furtherance of the conspiracy or as part of  
5 the substantive crimes charged occurred in the Southern  
6 District of New York which includes Manhattan, the Bronx and  
7 Westchester and Mount Vernon.

8 Then the government would have to prove each of the  
9 elements of each of the counts beyond a reasonable doubt. With  
10 respect to Count One it alleges a conspiracy to commit robbery  
11 that has three elements: First, that there was a conspiracy or  
12 an agreement between two or more people to commit robbery;  
13 second, that the defendant knowingly and willfully associated  
14 himself with and joined in the conspiracy; and third, that the  
15 conspiracy had or would have had potential or actual effect on  
16 interstate commerce.

17 The second count alleges robbery which is also what  
18 the conspiracy involves with respect to the first count so both  
19 for the first count and the second count the elements of  
20 robbery are: First, that the defendant obtained or took  
21 property of another; second, that the defendant took property  
22 against the victims' will by actual or threatened force,  
23 violence or fear of injury; third, that the defendant's  
24 actually or potentially affected interstate commerce; and  
25 fourth that the defendant acted unlawfully, willfully and

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1 knowingly. And with respect to the substantive robbery charge,  
2 the defendant is also charged as an aider and abettor.

3 Count Three alleges a conspiracy to commit robbery and  
4 also has three elements: First, the existence of a  
5 conspiracy -- excuse me.

6 Count Three charges conspiracy to commit kidnapping.  
7 It also has three elements: The existence of a conspiracy or  
8 agreement to commit kidnapping; that the defendant has  
9 knowingly and willfully associated himself with the conspiracy  
10 and joined in the conspiracy; and third, that the conspiracy  
11 had an actual or potential effect on interstate commerce.

12 The fourth count charges the substantive kidnapping  
13 and it has three elements: First, that the defendant seized or  
14 confined or kidnapped or abducted or carried away at least one  
15 individual; second, that the defendant held the individual for  
16 ransom, reward or any other reason; third, that the individual  
17 was transported in interstate commerce or the defendant  
18 traveled in interstate commerce or the defendant used any  
19 means, facility or instrumentality of interstate commerce in  
20 furtherance of the crime; and fourth that the defendant acted  
21 unlawfully, willfully and knowingly.

22 Again, the defendant is charged both substantively as  
23 a principal and as an aider and abettor with respect to Count  
24 Four.

25 The fifth count is that the defendant used, possessed,

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1 carried and brandished firearms during and in furtherance of  
2 the violent crimes charged in Counts One through Four and it  
3 has three elements and then an additional special finding that  
4 the government would have to prove beyond a reasonable doubt.  
5 First, that on the date alleged in the indictment the defendant  
6 used, carried or possessed a firearm or aided and abetted the  
7 use, carrying or possession of a firearm; second, that the  
8 defendant used or carried the firearm during a crime of  
9 violence or possessed the firearm in furtherance of the crime  
10 of violence; and third, that the defendant acted knowingly.  
11 And the government has alleged and would also have to prove  
12 beyond a reasonable doubt that the firearms were brandished.  
13 And, the defendant is charged both as a principal and as an  
14 aider and bettor with respect to this count as well.

15 THE COURT: In terms of brandishing, what is the  
16 government's view as to what the evidence would show?

17 MS. MOYNE: The government's view is evidence would  
18 show both the defendant and his co-defendant Dominique Jean  
19 Phillipe possessed a firearm, showed the firearm, pointed the  
20 firearm at the victims, at one point struck one of the victims  
21 over the head; that the firearm was in both defendants' hands  
22 at different points during the kidnapping and during the  
23 robbery and the defendants worked together with respect to the  
24 firearms.

25 THE COURT: Thank you.

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1 Mr. Cole?

2 DEFENDANT COLE: Yes.

3 THE COURT: It is time for you to decide if you want  
4 to give up your right not to incriminate yourself which is part  
5 of a plea of guilty if you still want to go down that road, and  
6 if you do then you need to tell me why you think you are guilty  
7 of the crimes that are charged in Counts One through Five.

8 MR. TOUGER: Do you mind if he sits, your Honor?

9 THE COURT: Yes, and I will just ask him some  
10 questions afterwards.

11 DEFENDANT COLE: I, along with others, agreed to  
12 kidnapping Jeanette Adams and did so on 9/2/12 by forcing her  
13 into her apartment where she was bound and held for two days  
14 until Patrick James came in and he was kidnapped and bound. As  
15 proceeds of the robbery we took marijuana, money and personal  
16 property. A gun was used during the commission of this crime.  
17 During the commission of the crime the victims were forced to  
18 use their cell phones.

19 THE COURT: Mr. Cole, you mentioned that you took the  
20 property of another, you robbed somebody while you were doing  
21 these acts, is that right?

22 DEFENDANT COLE: Yes.

23 THE COURT: Did you use force during the robbery?

24 MR. TOUGER: Your Honor, what happened was the robbery  
25 was at a different -- they went and got the property from a



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1 different location. There was force used to get that  
2 information but -- worldwide I don't know if that is true.

3 THE COURT: He took, was it an ATM card?

4 MR. TOUGER: No, no, no. There was property in  
5 another apartment and they got the keys from one of the victims  
6 and they went to that apartment and the property was stolen  
7 from that apartment.

8 THE COURT: Is that true, Mr. Cole, what your lawyer  
9 just said?

10 DEFENDANT COLE: Yes.

11 THE COURT: And did you, when you went from the one  
12 apartment to the other, is the way that you got the ability to  
13 go to the other apartment by threatening or using force on the  
14 victims?

15 DEFENDANT COLE: Yes.

16 THE COURT: When you engaged in the robbery did you do  
17 that knowing what you were doing was wrong?

18 DEFENDANT COLE: Yes.

19 THE COURT: And did you understand that you were  
20 engaging in a robbery at the time?

21 DEFENDANT COLE: Yes.

22 THE COURT: Where did the robbery occur?

23 DEFENDANT COLE: Bronx.

24 THE COURT: And when you agreed with another person to  
25 engage in the robbery -- one or more people to engage in the

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1 robbery -- where did that agreement occur?

2 DEFENDANT COLE: The Bronx.

3 THE COURT: Now, in terms of the gun that you said you  
4 had, did you have that in your hand at a certain time during  
5 these events?

6 MR. TOUGER: All we are willing to state at this  
7 moment is that he knew a gun was being used in the robbery.

8 THE COURT: Did you see the gun being held up or  
9 brandished in some way?

10 DEFENDANT COLE: Yes.

11 THE COURT: Did you see the gun being held up or  
12 brandished in some way in front of the victims so that the  
13 victims could see it?

14 (Defendant and counsel conferring)

15 DEFENDANT COLE: Yes.

16 THE COURT: Ms. Moyne, do you believe that there is a  
17 sufficient factual predicate for a plea of guilty as to each of  
18 the five counts should the defendant choose to do so?

19 MS. MOYNE: We do believe there is sufficient  
20 allocution except for one thing, but first the government would  
21 proffer the interstate element:

22 With respect to the robbery, the marijuana that was a  
23 target of the conspiracy and of the robbery was shipped from  
24 California.

25 THE COURT: Let me just pause there.

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1           Mr. Touger, is there any objection or any reason to  
2 disagree with that?

3           MR. TOUGER: There is no objection but obviously we  
4 didn't know that. Mr. Cole does not know that.

5           THE COURT: There is no reason that the defendant has  
6 to be aware of the interstate commerce element, is that  
7 correct?

8           MS. MOYNE: That's correct, your Honor.

9           THE COURT: All right.

10          MS. MOYNE: With respect to the kidnapping, the phones  
11 that the victims were forced to use had the ability to make  
12 phone calls out-of-state and internationally which is part of  
13 the interstate element of the kidnapping offenses.

14          THE COURT: Mr. Touger, any reason to dispute that  
15 fact?

16          MR. TOUGER: I have no reason to dispute it but  
17 obviously, again, Mr. Cole only knew that it could make the  
18 calls that it made.

19          THE COURT: Did Mr. Cole have any reason to believe  
20 that the cell phones that were being used operated in any  
21 manner that was different from the majority of cell phones?

22          MR. TOUGER: No.

23          THE COURT: All right.

24          MS. MOYNE: And with respect to the guns -- I'm sorry,  
25 your Honor, I think that you actually asked if they were

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1 brandished and we did cover that.

2 THE COURT: Do you believe there is sufficient factual  
3 predicate for a guilty plea as to each of the five charges  
4 should the defendant choose to enter one?

5 MS. MOYNE: Yes, Your Honor.

6 THE COURT: Mr. Touger, do you know of any reason,  
7 legal or otherwise, why your client should not enter a plea of  
8 guilty as to any of the five charges?

9 MR. TOUGER: No, your Honor.

10 THE COURT: Mr. Cole, now is the time for you to make  
11 your final decision and I'm going to ask you one by one how you  
12 plead to each of the counts and this is a decision for you and  
13 you alone to make. How do you plead, sir, to Count One?

14 DEFENDANT COLE: Guilty.

15 THE COURT: How do you plead, sir, to Count Two?

16 DEFENDANT COLE: Guilty.

17 THE COURT: How do you plea to Count Three?

18 DEFENDANT COLE: Guilty.

19 THE COURT: How do you plead to Count Four?

20 DEFENDANT COLE: Guilty.

21 THE COURT: And how do you plead to Count Five?

22 DEFENDANT COLE: Guilty.

23 THE COURT: Because you acknowledge that you are in  
24 fact guilty of the offenses charged in Counts One through Five  
25 and since I am convinced that you are pleading guilty

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1 voluntarily and that you know of your rights including your  
2 right to go to trial and that you also understand the possible  
3 consequences that could flow from entering a guilty plea to  
4 these charges, I accept your plea.

5 DEFENDANT COLE: All right.

6 THE COURT: What we are going to do now is set down a  
7 time for sentencing. The sentence date that we have is January  
8 17th, 2014. Is that an acceptable date?

9 MR. TOUGER: Was that January 14th?

10 THE COURT: 17th.

11 MR. TOUGER: No problem.

12 THE COURT: 12:00. Does that make sense?

13 MS. MOYNE: Yes, your Honor.

14 THE COURT: That would make the defense submissions  
15 due January 3rd, 2014 and the government's submissions due  
16 January 10th, 2014.

17 Now, Mr. Cole, the probation office is going to want  
18 to do a presentence investigation report; that's a document  
19 that I will receive that will set forth for me the crimes, some  
20 details about the crime but also very important details about  
21 who you are. Your counsel will have the opportunity to tell  
22 the Court more about who you are, what your background is and  
23 your view as to why you did what you did, mitigating  
24 circumstances, things that you might want to put forward for  
25 the Court in connection with sentencing.

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1           DEFENDANT COLE: All right.

2           THE COURT: When you read -- you will get a draft of  
3 the presentence report from the probation office before I ever  
4 do. You will have an opportunity and you should, if you see  
5 any errors at all, raise them with Mr. Touger and he'll either  
6 note them for the probation office so they can change them; if  
7 they won't change them then he will raise them with the Court  
8 and they can be noted as objections, all right?

9           DEFENDANT COLE: Yes.

10          THE COURT: Mr. Touger, will you facilitate the PSR  
11 interview?

12          MR. TOUGER: Yes, your Honor. If you would note that  
13 I would like to be there at the time?

14          THE COURT: All right.

15          Now, I also want to ask you, Mr. Touger, to try very  
16 hard to protect the sentencing date. What I try to do is keep  
17 sentencing dates as the dates. If you need me to move it to  
18 lunchtime because you think you might be on trial I would  
19 rather know that now and get it set for lunchtime. What I  
20 don't want to do is have it be as I know many judges do is the  
21 first of a series of minuets that occur. So, this is the date.

22          MR. TOUGER: Your Honor, let me answer that by saying  
23 this: I have nothing scheduled for trial at this moment at  
24 that time but a lot of judges think defense lawyers control  
25 their schedule. We don't.

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1 THE COURT: You think we control your schedule?

2 MR. TOUGER: I think Judges in general, not you. If  
3 Judges would get along better with each other about where I  
4 should be we would have no problems, but if another federal  
5 judge orders me to be somewhere I will give them your name and  
6 tell them to contact you.

7 THE COURT: Understood. Understood. To the extent  
8 that it is reasonably possible I would like to keep that date.

9 MR. TOUGER: I will do everything I can to be in this  
10 courtroom at 12:00 on that day.

11 THE COURT: Is there any anything further we should do  
12 on this matter absent this time?

13 MS. MOYNE: Your Honor, it is a matter that relates to  
14 both defendants but the government anticipates that there will  
15 be a Fatico hearing in this case and so we would like to  
16 schedule that.

17 THE COURT: Let's pick a date sometime. What we will  
18 need to do then is to pick a date right after the 10th because  
19 we will need to get the submissions to figure out where there  
20 are differences and the Court will then set a hearing and  
21 probably issue an order as to the topics of that hearing at  
22 that time. Do we have some time between the 10th and the 17th,  
23 Joe?

24 THE DEPUTY CLERK: Tuesday, January 14th, at 3:00 p.m.

25 THE COURT: How about Wednesday the 15th?

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1 THE DEPUTY CLERK: Wednesday the 15th at 3:00 p.m.

2 THE COURT: I will be able to issue an order on the  
3 Monday.

4 MR. TOUGER: Your Honor, I am thinking that if it is  
5 both of us that 3:00 may not be enough time.

6 THE COURT: Let's move it back. Can we do it at noon?

7 THE DEPUTY CLERK: Noon is fine.

8 THE COURT: Do you think we will need a whole day?  
9 You guys know the issues.

10 MR. TOUGER: With two defense lawyers and the  
11 government I would think so, yes.

12 THE COURT: Let's block a day.

13 THE DEPUTY CLERK: Wednesday, January 15th.

14 THE COURT: January 15th is blocked for a Fatico  
15 hearing.

16 MR. TOUGER: 9:30?

17 THE COURT: 9:30.

18 Is there anything further that we should do on this  
19 matter at this time?

20 MS. MOYNE: That will be all for the government.

21 THE COURT: We are adjourned on this matter and I  
22 would ask the marshals to bring out Mr. Dominique Jean Phillipe  
23 and Mr. Cole should return to the side room.

24 MR. TOUGER: Your Honor, I know this is not within the  
25 Court's power but if -- he was moved to the MCC for trial this



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1 weekend, I believe, if he could move back to Brooklyn, that  
2 would be his --

3 THE COURT: Certainly I think that you can ask to have  
4 him.

5 MR. TOUGER: I will talk to the marshals. I just  
6 wanted to bring it up to the Court.

7 THE COURT: Right. If you have a problem, let me  
8 know.

9 (Defendant Phillipe is now present; Defendant Cole is  
10 not)

11 THE COURT: Mr. Heinrich, is it your intention that  
12 your client may potentially plead guilty to the charges  
13 contained in the indictment?

14 MR. HEINRICH: That is correct, your Honor.

15 THE COURT: Here is what I would like to do.

16 First of all, I want to make sure that I'm not calling  
17 you Mr. Phillipe as your last name and actually you go by  
18 Mr. Jean Phillipe. So, do you go by Mr. Phillipe or Mr. Jean  
19 Phillipe?

20 DEFENDANT PHILLIPE: Phillipe.

21 THE COURT: The first thing I want to do,  
22 Mr. Phillipe, is that I want to tell you that you have not yet  
23 entered a guilty plea and make sure you understand that.

24 Do you understand that?

25 You have to answer audibly.

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1           DEFENDANT PHILLIPE: Understood.

2           THE COURT: What we are going to do is go through some  
3 matters this morning to make sure your mind is clear and to  
4 make sure that you understand certain rights and then I'm going  
5 to ask you for your plea. At that point you are going to enter  
6 a plea if you choose to do so, all right?

7           MR. HEINRICH: Judge, could those drapes be drawn  
8 because they're shining in my eyes and I have a tendency to  
9 react to that.

10          THE COURT: Absolutely. Some Judges keep them drawn.

11          MR. HEINRICH: I like the nice bright room but it is a  
12 killer. Thank you very much.

13          THE COURT: Mr. Phillipe, do you understand that at  
14 this time you have not yet entered a plea?

15          DEFENDANT PHILLIPE: I understand.

16          THE COURT: You can still go to trial at this time.  
17 The time that your right to a trial is going to be taken away  
18 is if you enter a plea later in these proceedings.

19          Do you understand that?

20          DEFENDANT PHILLIPE: I understand, your Honor.

21          THE COURT: I'm going to have my deputy put you under  
22 oath because I want to make sure that your mind is clear and  
23 you are not confused about why you are here, so I'm going to  
24 ask you some questions. That is part of what we do during this  
25 guilty plea so I can assure myself that you're not thinking

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1 that you are off in some other zone. All right? So, I'm going  
2 to ask my deputy to put you under oath.

3 (Defendant sworn)

4 THE DEPUTY CLERK: Please state your full name and  
5 spell your last name, for the record.

6 DEFENDANT PHILLIPE: Dominique Phillipe, last name  
7 J-E-A-N - P-H-I-L-I-P-P-E.

8 THE COURT: Mr. Phillipe, you go by Phillipe not  
9 Jean-Phillipe?

10 DEFENDANT PHILLIPE: Phillipe.

11 THE COURT: Do you understand that you are under oath  
12 and you have to answer my questions truthfully or you could be  
13 separately prosecuted for perjury?

14 DEFENDANT PHILLIPE: I understand your Honor.

15 THE COURT: How old are you, sir?

16 DEFENDANT COLE: 33.

17 THE COURT: Where were you born?

18 DEFENDANT COLE: Port-Au-Prince, Haiti.

19 THE COURT: Are you an American citizen?

20 DEFENDANT COLE: No.

21 THE COURT: Do you understand that if you enter a  
22 guilty plea that serious immigration consequences are likely as  
23 a result of entering that guilty plea?

24 DEFENDANT PHILLIPE: That is understood, your Honor.

25 THE COURT: Do you understand that deportation would

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1 be presumptively mandatory if you entered a guilty plea?

2 DEFENDANT PHILLIPE: Yeah.

3 THE COURT: Do you have a spouse or significant other?

4 DEFENDANT PHILLIPE: Yes.

5 THE COURT: Do you have any kids?

6 DEFENDANT PHILLIPE: Yes.

7 THE COURT: How many kids do you have?

8 DEFENDANT PHILLIPE: Two.

9 THE COURT: How old are your children?

10 DEFENDANT PHILLIPE: 6 and one is about 9. 9, 10  
11 months.

12 THE COURT: Nine, years old?

13 DEFENDANT COLE: Nine, 10 months old.

14 THE COURT: When did you come --

15 DEFENDANT PHILLIPE: Oh 9, 10 months.

16 THE COURT: When did you come to this country?

17 DEFENDANT PHILLIPE: 1986.

18 THE COURT: Did you go to school here?

19 DEFENDANT PHILLIPE: Yes.

20 THE COURT: What is the highest level of school you  
21 achieved?

22 DEFENDANT PHILLIPE: Eleventh grade.

23 THE COURT: Have you ever gotten your GED?

24 DEFENDANT PHILLIPE: No.

25 THE COURT: Have you ever been hospitalized for any

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1 kind of alcohol problem?

2 DEFENDANT PHILLIPE: No.

3 THE COURT: Have you ever been treated for an alcohol  
4 problem?

5 DEFENDANT PHILLIPE: No.

6 THE COURT: Have you ever been treated for a drug  
7 problem?

8 DEFENDANT COLE: No.

9 THE COURT: Have you ever been hospitalized for a drug  
10 problem?

11 DEFENDANT PHILLIPE: No.

12 THE COURT: Have you ever been treated for any kind of  
13 psychological or mental problem of any kind at all?

14 DEFENDANT PHILLIPE: No, your Honor.

15 THE COURT: Have you ever been hospitalized for any  
16 kind of psychological issue or mental problem?

17 DEFENDANT PHILLIPE: No.

18 THE COURT: Have you ever had any kind of physical  
19 injury to your head?

20 DEFENDANT PHILLIPE: No.

21 THE COURT: Is there anything at all that I should  
22 know about your medical background that would -- that you  
23 believe would help me understand whether or not your mind is  
24 clear right now?

25 DEFENDANT PHILLIPE: No, your Honor.

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1 THE COURT: Do you believe your mind is clear right  
2 now?

3 DEFENDANT PHILLIPE: Yes.

4 THE COURT: Do you know why we are here?

5 DEFENDANT PHILLIPE: Yes.

6 THE COURT: Is there any fuzziness in your mind or any  
7 lack of clarity as to these proceedings right now?

8 DEFENDANT PHILLIPE: No, your Honor.

9 THE COURT: Does either counsel have any doubt as to  
10 Mr. Phillipe's competency to consider the matters that we are  
11 going to go over this morning and, if he chooses to do so, to  
12 enter a guilty plea?

13 MS. MOYNE: No, your Honor.

14 MR. HEINRICH: No, your Honor.

15 THE COURT: I do find that Mr. Phillipe is quite clear  
16 in his responses to me, his demeanor is very forthright, he is  
17 looking me in the eyes as he answers the questions and I find  
18 that he is competent, certainly, to consider the matters that  
19 we are going to go over and, if he chooses to do so, to enter a  
20 guilty plea later in these proceedings.

21 You may be seated, sir.

22 What we are going to do now is go over certain rights  
23 that you have. Do you understand you have a right to a lawyer  
24 now and at every stage in these proceedings?

25 DEFENDANT PHILLIPE: Understood, your Honor.

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1 THE COURT: And Mr. Heinrich is your lawyer?

2 DEFENDANT PHILLIPE: Yes.

3 THE COURT: Are you satisfied with his representation  
4 of you?

5 DEFENDANT PHILLIPE: Yes.

6 THE COURT: Have you had a chance to discuss your case  
7 with Mr. Heinrich?

8 DEFENDANT PHILLIPE: Yes.

9 THE COURT: Have you had an opportunity to discuss any  
10 defenses that you may have?

11 DEFENDANT PHILLIPE: Yes.

12 THE COURT: Have you had an opportunity to discuss  
13 with Mr. Heinrich the possible consequences that could flow  
14 from entering a guilty plea?

15 DEFENDANT PHILLIPE: Yes.

16 THE COURT: Do you understand that -- have you  
17 discussed with your lawyer the possible charges that are  
18 associated with each of the counts? I mean the possible  
19 penalties that flow from each of the counts?

20 DEFENDANT PHILLIPE: Yes.

21 THE COURT: Let's talk now about certain rights to a  
22 trial that you have because you give up your right to a trial  
23 if you plead guilty.

24 Do you understand that?

25 DEFENDANT PHILLIPE: I understand, your Honor.

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1 THE COURT: You understand you haven't given up that  
2 right yet?

3 DEFENDANT PHILLIPE: I understand.

4 THE COURT: Do you understand that under the laws of  
5 the United States and the U.S. Constitution, you are entitled  
6 to a speedy and public trial of the charges contained in the  
7 indictment against you?

8 DEFENDANT PHILLIPE: I understand.

9 THE COURT: Do you understand that at that trial you  
10 would be presumed to be innocent and the government would have  
11 to prove that you were guilty beyond a reasonable doubt before  
12 you could be found guilty?

13 DEFENDANT PHILLIPE: Understood.

14 THE COURT: Do you understand that a jury of 12 people  
15 would have to agree unanimously that you were guilty before a  
16 verdict could be returned against you?

17 DEFENDANT PHILLIPE: Understood.

18 THE COURT: At that trial and at every stage of your  
19 case you would be entitled to be represented by a lawyer.

20 Do you understand that?

21 DEFENDANT PHILLIPE: I understand.

22 THE COURT: Now, during a trial the witnesses for the  
23 government would have to come to Court and testify in your  
24 presence and Mr. Heinrich would have an opportunity to  
25 cross-examine them and he would have an opportunity to object



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1 to any evidence offered by the government and he would have the  
2 opportunity to subpoena witnesses on your behalf and to proffer  
3 evidence on your behalf.

4 Do you understand those things?

5 DEFENDANT PHILLIPE: I understand.

6 THE COURT: Do you understand that at a trial,  
7 although you would have a right to testify, you would also have  
8 the right not to testify and, if you chose not to testify, the  
9 jury would be instructed that they could not draw any inference  
10 or suggestion of guilt from the fact you did not testify?

11 DEFENDANT PHILLIPE: I understand.

12 THE COURT: Now, do you also understand that if you  
13 want to plead guilty in a few minutes I'm going to ask you why  
14 you think you're guilty of the charges against you, and when  
15 you answer that it means you are giving up your right not to  
16 incriminate yourself.

17 Do you understand that?

18 DEFENDANT PHILLIPE: I understand.

19 THE COURT: Now, the charges against you each carry  
20 separate penalties or potential penalties. Do you understand  
21 that?

22 DEFENDANT PHILLIPE: I understand.

23 THE COURT: I'm going to go through them each right  
24 now and make sure that you understand the possible penalties  
25 that could flow from each of the counts.

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1 Do you understand that in Count One you are charged  
2 with conspiring to commit a robbery in or about September of  
3 2012?

4 DEFENDANT PHILLIPE: I understand.

5 THE COURT: And do you understand that that charge  
6 carries a maximum term of imprisonment of 20 years?

7 DEFENDANT PHILLIPE: Understood.

8 THE COURT: And a maximum term of supervised release  
9 of three years?

10 DEFENDANT PHILLIPE: Understood.

11 THE COURT: And do you understand that that count  
12 carries a maximum fine of the greatest of \$250,000, twice the  
13 gross pecuniary gain derived from the offense or twice the  
14 gross pecuniary loss to persons other than yourself resulting  
15 from the offense, and a \$100 mandatory special assessment?

16 DEFENDANT PHILLIPE: Understood.

17 THE COURT: Do you understand that Count Two carries  
18 separate penalties?

19 DEFENDANT PHILLIPE: Understood.

20 THE COURT: And Count Two charges you with committing  
21 and aiding and abetting the commission of a robbery in or about  
22 2012?

23 Do you understand that?

24 DEFENDANT PHILLIPE: I understand.

25 THE COURT: Do you understand that Count Two carries a

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1 maximum term of imprisonment of 20 years and a maximum term of  
2 supervised release of three years?

3 DEFENDANT PHILLIPE: I understand.

4 THE COURT: Do you understand that Count Two also  
5 carries a maximum fine that's the same as Count One?

6 DEFENDANT PHILLIPE: Understood.

7 THE COURT: And do you understand that Count Two also  
8 carries a mandatory special assessment of \$100?

9 DEFENDANT PHILLIPE: Understood.

10 THE COURT: Do you understand that in Count Three you  
11 are charged with conspiring to commit kidnapping in or about  
12 September of 2012.

13 DEFENDANT PHILLIPE: Understood.

14 THE COURT: And do you understand that Count Three  
15 carries penalties that are separate from those which could be  
16 imposed for Counts One and Two?

17 DEFENDANT PHILLIPE: I understand.

18 THE COURT: Do you understand that Count Three carries  
19 a maximum term of life imprisonment?

20 DEFENDANT PHILLIPE: I understand.

21 THE COURT: Do you understand that Count Three carries  
22 a maximum term of supervised release of five years?

23 DEFENDANT PHILLIPE: Understood.

24 THE COURT: Do you understand that Count Three also  
25 carries a maximum fine of \$250,000 or the greatest of \$250,000

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1 or twice the gross pecuniary gain derived from the offense or  
2 twice the gross pecuniary loss to persons other than yourself  
3 resulting from the offense, and a separate \$100 mandatory  
4 special assessment?

5 DEFENDANT PHILLIPE: Understood.

6 THE COURT: Do you understand that Count Four charges  
7 you with committing and aiding and abetting the commission of  
8 the kidnapping in September 2012.

9 DEFENDANT PHILLIPE: Understood.

10 THE COURT: Do you understand that Count Four carries  
11 separate possible penalties from each of the other counts?

12 DEFENDANT PHILLIPE: Understood.

13 THE COURT: Do you understand that Count Four carries  
14 a maximum term of life imprisonment?

15 DEFENDANT PHILLIPE: I understand.

16 THE COURT: Do you understand that Count Four carries  
17 a maximum term of supervised release of five years?

18 DEFENDANT PHILLIPE: Understood.

19 THE COURT: Do you understand that Count Four carries  
20 a maximum fine that is the same as that which could be  
21 separately imposed for Counts One, Two and Three?

22 DEFENDANT PHILLIPE: Understood.

23 THE COURT: Do you understand that Count Four also  
24 carries a mandatory \$100 special assessment?

25 DEFENDANT PHILLIPE: Understood.

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1 THE COURT: Do you understand that Count Five charges  
2 you with carrying, using and brandishing a firearm during and  
3 in relation to, and possessing a firearm in furtherance of the  
4 violent crimes charged in Counts One, Two, Three and Four?

5 DEFENDANT PHILLIPE: Understood.

6 THE COURT: Do you understand that Count Five carries  
7 its own separate possible penalty?

8 DEFENDANT PHILLIPE: Understood.

9 THE COURT: Do you understand that the penalty for  
10 Count Five must run -- well, Count Five carries a maximum  
11 possible period of imprisonment of life?

12 DEFENDANT PHILLIPE: Understood.

13 THE COURT: Do you understand that Count Five carries  
14 a mandatory minimum term of imprisonment of seven years and  
15 that those seven years must be served consecutively which means  
16 following any other term of imprisonment imposed for Counts One  
17 through Four?

18 DEFENDANT PHILLIPE: Understood.

19 THE COURT: Do you understand that Count Five also  
20 carries a maximum term of supervised release of five years?

21 DEFENDANT PHILLIPE: Understood.

22 THE COURT: Do you understand that Count Five also  
23 carries the same fine that could be -- the possibility of the  
24 same fine that could be imposed for Counts One through Four?

25 DEFENDANT PHILLIPE: Understood.

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1 THE COURT: And do you understand that Count Five also  
2 carries a mandatory \$100 special assessment?

3 DEFENDANT PHILLIPE: Understood.

4 THE COURT: Now, there is also the possibility that  
5 the Court could impose restitution. Do you understand that?

6 DEFENDANT PHILLIPE: Understood.

7 THE COURT: Do you understand that the Court could  
8 also require you to forfeit any property or proceeds traceable  
9 to the offenses in Counts One through Five?

10 DEFENDANT PHILLIPE: Understood.

11 THE COURT: Do you understand that any restitution or  
12 forfeiture ordered by the Court would not be in place of any  
13 fine that the Court would impose?

14 DEFENDANT PHILLIPE: Understood.

15 THE COURT: Do you understand that if you are released  
16 from prison and there is a period of supervised release  
17 imposed, that you have to comply with the terms of supervised  
18 release because if you don't comply with the terms of  
19 supervised release you could be returned to prison without a  
20 trial?

21 DEFENDANT PHILLIPE: Understood.

22 THE COURT: But do you understand also that if you  
23 plead guilty because you are not a U.S. citizen, deportation is  
24 presumptively mandatory so it's most likely that you would be  
25 deported from this country?

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1 DEFENDANT PHILLIPE: Understood.

2 THE COURT: Do you understand that no one -- not the  
3 government, not your lawyer -- no one can predict what your  
4 sentence is going to be because only the Court is going to  
5 determine your sentence and I'm not going to do that right now.

6 DEFENDANT PHILLIPE: Understood.

7 THE COURT: Do you understand that in this letter  
8 which the government gave you they have provided their own  
9 estimation as to your offense level and that estimation is 44?

10 Do you understand that?

11 DEFENDANT PHILLIPE: Understood.

12 THE COURT: And do you understand that that then is  
13 reduced to -- what is it reduced to?

14 MS. MOYNE: It was 46 and it gets reduced to 44.

15 THE COURT: I see, 46 to 44.

16 Do you understand that the government has calculated  
17 your Criminal History Category as III?

18 DEFENDANT PHILLIPE: Understood.

19 THE COURT: Now, do you understand that the Court has  
20 to independently determine what your appropriate offense level  
21 is prior to your sentencing?

22 DEFENDANT PHILLIPE: Understood.

23 THE COURT: And, do you understand that my calculation  
24 may be the same as what the government has put in its letter  
25 that it gave to you or it may be different from that which the

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1 government calculated?

2 DEFENDANT PHILLIPE: Understood.

3 THE COURT: And, do you understand that that is also  
4 true for your Criminal History Category? I have to do my own  
5 determination of what your Criminal History Category is and it  
6 might be the same or it might be different from what the  
7 government has come up with.

8 DEFENDANT PHILLIPE: Understood.

9 THE COURT: Do you have any agreement at all with the  
10 government?

11 DEFENDANT PHILLIPE: No, your Honor.

12 THE COURT: Do you have any agreement or promise from  
13 anybody as to what your sentence will be?

14 DEFENDANT PHILLIPE: No, your Honor.

15 THE COURT: Has anybody told you that you can withdraw  
16 your plea if you enter a plea?

17 DEFENDANT PHILLIPE: No.

18 THE COURT: You understand that if you enter a plea  
19 you will be bound by that plea no matter what your sentence is?

20 DEFENDANT PHILLIPE: I understand.

21 THE COURT: Do you understand that even if your  
22 sentence ends up being different from what you hope it, want it  
23 to be, what you expect it will be, that once you enter a plea  
24 you will be bound by that plea and you can't can withdraw that  
25 plea later?



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1 DEFENDANT PHILLIPE: I understand.

2 THE COURT: Do you understand if you enter a guilty  
3 plea you give up your right to go to trial?

4 DEFENDANT PHILLIPE: I understand.

5 THE COURT: Has anybody forced you to plead guilty?

6 DEFENDANT PHILLIPE: No, your Honor.

7 THE COURT: Has anybody coerced you to plead guilty or  
8 threatened you to plead guilty in any way?

9 DEFENDANT PHILLIPE: No, your Honor.

10 THE COURT: Is your decision, if you plead guilty,  
11 your own decision?

12 DEFENDANT PHILLIPE: Yes.

13 THE COURT: Is it a voluntary decision?

14 DEFENDANT PHILLIPE: Yes.

15 THE COURT: Has anybody promised you at all what your  
16 sentence might be?

17 DEFENDANT PHILLIPE: No.

18 THE COURT: I want to discuss with you the factual  
19 basis for your plea. As I said before, it is important that if  
20 you plead guilty it is because you are guilty and not for any  
21 other reason so I want you to tell me why you think you're  
22 guilty of the crimes that are charged in Counts One through  
23 Five.

24 DEFENDANT PHILLIPE: Together, along with other  
25 people, I forced Janet Adams, at gunpoint, into her apartment

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1 where she was held for more than a day in order to get her  
2 boyfriend to show up so we could rob him of drugs and  
3 proceeds -- drug proceeds. And when he showed up we held him,  
4 took his keys, went to his other apartment and got his drugs  
5 and money.

6 THE COURT: And where were you -- anything else?

7 DEFENDANT PHILLIPE: No. That's it, your Honor.

8 THE COURT: What year did that occur or when did that  
9 occur?

10 DEFENDANT PHILLIPE: September 2012.

11 THE COURT: And when you made the agreement with  
12 others to engage in the robbery and the kidnapping, where were  
13 you physically? In the Bronx or some place else?

14 DEFENDANT PHILLIPE: In the Bronx.

15 THE COURT: And when you made the agreement with other  
16 people, did you do so knowing that you were going and do a  
17 robbery.

18 THE MARSHAL: Yes, your Honor.

19 THE COURT: Did you engage in the agreement with the  
20 other people knowingly and willfully?

21 DEFENDANT PHILLIPE: Yes.

22 THE COURT: Did the woman whose name you mentioned,  
23 you said that you threatened her with force?

24 DEFENDANT PHILLIPE: Yes.

25 THE COURT: Did you actually use force against her?

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1 DEFENDANT PHILLIPE: Yes.

2 THE COURT: When you took her against her will, did  
3 you do that knowingly? Did you know you were taking her  
4 against her will?

5 DEFENDANT PHILLIPE: Yes, your Honor.

6 THE COURT: Did you know that you were restraining her  
7 and preventing her from leaving against her will?

8 DEFENDANT PHILLIPE: Yes, your Honor.

9 THE COURT: Did you agree with others to kidnap that  
10 woman?

11 DEFENDANT PHILLIPE: Yes.

12 THE COURT: And when you agreed with others to kidnap  
13 that woman did you do so knowingly and willfully?

14 DEFENDANT PHILLIPE: Yes.

15 THE COURT: The proffer on the interstate element.

16 MS. MOYNE: With respect to the robbery, the marijuana  
17 that was stolen was shipped from California.

18 THE COURT: Mr. Heinrich, any reason to disagree with  
19 that proffer?

20 MR. HEINRICH: No.

21 THE COURT: All right.

22 MS. MOYNE: And with respect to the kidnapping of the  
23 victims, the defendant and others forced the victims to use  
24 their cell phones in order to further their crime. The female  
25 victim was forced to use a cell phone in order to get in touch

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1 with the male victim and the male was forced to use his cell  
2 phone in order to meet a random demand.

3 THE COURT: All right.

4 MS. MOYNE: And those cell phones had the ability to  
5 call interstate and internationally?

6 THE COURT: All right.

7 Mr. Phillipe, did the victim, did the victims use a  
8 cell phone?

9 DEFENDANT PHILLIPE: Yes, your Honor.

10 THE COURT: Mr. Heinrich, do you have any reason to  
11 disagree with the proffer by the government?

12 MR. HEINRICH: I do not.

13 THE COURT: Does the government believe that there is  
14 a sufficient factual predicate for a plea of guilty as to each  
15 of the five charges?

16 MS. MOYNE: Your Honor, the defendant said that he and  
17 others held the victim at gunpoint. Just maybe a clarification  
18 that what is meant by that, that the guns were brandished and  
19 shown to the victim?

20 THE COURT: Mr. Phillipe, when you held the victims at  
21 gunpoint, did they know they were being held at gunpoint?

22 DEFENDANT PHILLIPE: Yes.

23 THE COURT: Could they see the gun?

24 DEFENDANT PHILLIPE: Yes.

25 MS. MOYNE: And then the robbery and the kidnapping

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1 occurred in the Bronx as well.

2 THE COURT: All right.

3 I asked you before, Mr. Phillipe, about where the  
4 agreement with people to commit the robbery occurred and you  
5 said the Bronx. Did the robbery actually occur in the Bronx?

6 DEFENDANT PHILLIPE: Yes, your Honor.

7 THE COURT: And did the kidnapping actually occur in  
8 the Bronx?

9 DEFENDANT PHILLIPE: Yes.

10 THE COURT: Did the agreement to kidnap the victim  
11 also occur in the Bronx?

12 DEFENDANT PHILLIPE: Yes.

13 THE COURT: And when you held the gun or when the gun  
14 was held up in front of the victims, was that also in the  
15 Bronx?

16 DEFENDANT PHILLIPE: Yes.

17 THE COURT: Ms. Moyne, is there a sufficient factual  
18 predicate for a plea should the defendant choose to enter one,  
19 as to each of the five counts?

20 MS. MOYNE: Yes, your Honor.

21 THE COURT: Mr. Heinrich, do you know of any legal or  
22 other reason why your client should not enter a guilty plea,  
23 should he choose to do so?

24 MR. HEINRICH: I do not.

25 THE COURT: Mr. Phillipe, it is now time for you to

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1 make your final decision. Once you enter a guilty plea as to  
2 any count you will be giving up your right to go to trial. Do  
3 you understand that?

4 DEFENDANT PHILLIPE: I understand, your Honor.

5 THE COURT: How do you plead, sir, to Count One?

6 DEFENDANT PHILLIPE: I plead guilty.

7 THE COURT: How do you plea, sir, to Count Two?

8 DEFENDANT PHILLIPE: Guilty.

9 THE COURT: How do you plead, sir, to Count Three?

10 DEFENDANT PHILLIPE: Guilty.

11 THE COURT: How do you plead, sir, to Count Four?

12 DEFENDANT PHILLIPE: Guilty.

13 THE COURT: How do you plead, sir, to Count Five?

14 DEFENDANT PHILLIPE: Guilty.

15 THE COURT: Since you have stated that you are in fact  
16 guilty of these offenses and given an adequate allocution as to  
17 each of the charges and since I believe that you are pleading  
18 guilty knowingly and voluntarily, that you know of your rights  
19 including your right to go to trial, I accept your plea. And I  
20 also find that you are aware of the consequences of pleading  
21 guilty.

22 Now, what is going to happen next is we are going to  
23 set up a sentencing date. We have a date of January 17th at  
24 9:00 a.m. Does that work for people?

25 MS. MOYNE: That's fine for the government.

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1 THE COURT: Mr. Heinrich?

2 MR. HEINRICH: That works for me, Judge.

3 THE COURT: That makes the defense submissions due on  
4 January 3rd and the government submissions due on January 10th.

5 I also understand that there is a likelihood of a  
6 Fatico hearing relating to a contested issue of fact for the  
7 sentencing. Is that right?

8 MR. HEINRICH: Yes.

9 THE COURT: We have set aside the entire day on  
10 January 15th for that hearing. Does that work for you,  
11 Mr. Heinrich?

12 MR. HEINRICH: It does, Judge.

13 THE COURT: So, to the extent possible, try very hard  
14 if you could -- I know that there are events that are outside  
15 of your control -- to protect that Fatico hearing because there  
16 will be a number of people involved in that and also the  
17 sentencing time itself.

18 MR. HEINRICH: Judge, my experience has been when I  
19 say a federal judge has ordered me, I usually have no problem  
20 so I don't anticipate any problems.

21 THE COURT: All right. All right. Thank you.

22 Can I just ask, since you both have asked for the  
23 Fatico hearing, can you give me a top line description of -- I  
24 don't need to go into details of what it is going to be so I  
25 can at least get myself prepared if I want to do some

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1 preliminary legal research.

2 MS. MOYNE: Yes, your Honor.

3 In the Pimentel letter we indicated the government  
4 believes a number of enhancements apply to the kidnapping  
5 charge; that there was a sexual assault, that there was a  
6 random demand, that serious bodily injury resulted, and that  
7 the loss exceeded \$10,000. I think that covers the  
8 enhancements but we believe that the defense may not agree to  
9 all of those enhancements and so the Fatico would address that  
10 and I imagine we will call three witnesses to testify at the  
11 Fatico hearing.

12 THE COURT: All right.

13 Mr. Heinrich, without going into right now which ones  
14 intensely you disagree with although you are welcome to if you  
15 are prepared to, does that generally correspond with your view?

16 MR. HEINRICH: Except for the monetary amount I think  
17 the other two accurately say we would disagree with the serious  
18 bodily injury and the sexual allegation.

19 THE COURT: All right.

20 Now, Mr. Phillipe, what is going to happen next is the  
21 probation officer is going to want to do an interview of you to  
22 create a document called a presentence investigation report.  
23 That document tells me a lot about the crime -- I will  
24 obviously know if there is a Fatico hearing and I will have  
25 submissions in hand by then, I will know something about it,



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1 but it also tells me things about you personally. Your lawyer  
2 will also have the opportunity to put in a submission that will  
3 talk about you personally, try to bring out any factors which  
4 he and you believe the Court should take into consideration in  
5 mitigation of a sentence. And so, when the probation office  
6 report comes to you in draft form, you will have a chance to  
7 read it and Mr. Heinrich will have a chance to read it before  
8 it ever gets to me. If you notice any errors at all, raise it  
9 with Mr. Heinrich and he can either tell probation and ask them  
10 to change it; if they won't change he can raise them with the  
11 Court and lodge a formal objection. All right?

12 Mr. Heinrich, will you facilitate the interview from  
13 the probation office?

14 MR. HEINRICH: I will, your Honor, and as my  
15 predecessor will directly reflect, I want to be present at the  
16 time.

17 THE COURT: Thank you.

18 Is there anything further that we should do at this  
19 time?

20 MS. MOYNE: Not on behalf of the government.

21 THE COURT: Mr. Heinrich?

22 MR. HEINRICH: Nothing that I can think of, Judge.

23 THE COURT: Then we are adjourned until January 15,  
24 9:30 a.m. 9:30 a.m. on the 15th. Thank you.

25 o0o